

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5425

By Delegate Mazzocchi

[Introduced February 02, 2024; Referred to the
Committee on Education]

1 A BILL to amend and reenact §18A-4-7a of the Code of West Virginia, 1931, as amended, relating
 2 to permitting the granting waivers of experience required in employment of professional
 3 education personnel.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion, and transfer of professional personnel; qualifications.

1 (a) A county board of education shall make decisions affecting the filling of vacancies in
 2 professional positions of employment on the basis of the applicant with the highest qualifications:
 3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to
 4 §18-4-2 of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of
 6 employment, consideration shall be given to each of the following:

7 (1) Appropriate certification, licensure or both;

8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching
 9 position, the amount of teaching experience in the required certification area: *Provided*, That a
 10 waiver may be granted, if no applicant has six or more years' experience, where six or more years
 11 of experience is required to apply;

12 (3) The amount of course work, degree level or both in the relevant field and degree level
 13 generally;

14 (4) Academic achievement;

15 (5) In the case of a principal or classroom teaching position, certification by the National
 16 Board for Professional Teaching Standards;

17 (6) Specialized training relevant to performing the duties of the job;

18 (7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this
 19 code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the
 20 teaching profession;

21 (8) Seniority;

22 (9) Other measures or indicators upon which the relative qualifications of the applicant may
23 fairly be judged;

24 (10) In the case of a classroom teaching position, the recommendation of the principal of
25 the school at which the applicant will be performing a majority of his or her duties; and

26 (11) In the case of a classroom teaching position, the recommendation, if any, resulting
27 from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty
28 senate of the school at which the employee will be performing a majority of his or her duties.

29 (c) In the case of a principal or classroom teaching position, when filling of a vacancy
30 pursuant to this section, a county board is entitled to determine the appropriate weight to apply to
31 each of the criterion when assessing an applicant's qualifications: *Provided*, That if one or more
32 permanently employed instructional personnel apply for a classroom teaching position and meet
33 the standards set forth in the job posting, each criterion under subsection (b) of this section shall
34 be given equal weight except that the criterion in subdivisions (10) and (11) of this section shall
35 each be double weighted: *Provided*, That a waiver may be granted, if no applicant has six or more
36 years' experience, where six or more years of experience is required to apply.

37 (d) For a classroom teaching position, if the principal and faculty senate recommend the
38 same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the
39 superintendent concurs with those recommendations, then the other provisions of subsections (b)
40 and (c) of this section do not apply and the county board shall appoint that applicant
41 notwithstanding any other provision of this code to the contrary.

42 (e) The state board shall promulgate a rule, including an emergency rule if necessary, in
43 accordance with the provisions of §29A-3B-1 *et seq.* of this code to implement and interpret the
44 provisions of this section. The rule may provide for a classroom teacher who directly participates in
45 making recommendations pursuant to this section to be compensated at the appropriate daily rate
46 during periods of participation beyond his or her individual contract.

47 (f) The recommendations of the principal and faculty senate made pursuant to subdivisions
48 (10) and (11), subsection (b) of this section shall be based on a determination as to which applicant
49 is the most highly qualified for the position: *Provided*, That nothing in this subsection may require
50 principals or faculty senates to assign any amount of weight to any factor in making a
51 recommendation.

52 (g) With the exception of guidance counselors, the seniority of classroom teachers, as
53 defined in section one, article one of this chapter, shall be determined on the basis of the length of
54 time the employee has been employed as a regular full-time certified and/or licensed professional
55 educator by the county board of education and shall be granted in all areas that the employee is
56 certified, licensed or both.

57 (h) If two or more employees with the same certification establish an identical seniority date
58 as a result of initial employment as a regular teacher on or after July 1, 2019, the priority between
59 these employees shall be determined by a random selection system established by the
60 employees and approved by the county board. A board shall conduct the random selection within
61 30 days of the time the employees with the same certification establish an identical seniority date.
62 All employees with an identical seniority date and the same certification shall participate in the
63 random selection. As long as the affected employees hold the identical seniority date within a
64 certification, the initial random selection conducted by the board shall be permanent for the
65 duration of the employment of the employees by the board.

66 (i) Upon completion of 133 days of employment in any one school year, substitute
67 teachers, except retired teachers and other retired professional educators employed as
68 substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a
69 permanent, full-time professional employee. One hundred thirty-three days or more of said
70 employment shall be prorated and shall vest as a fraction of the school year worked by the
71 permanent, full-time teacher.

72 (j) Guidance counselors and all other professional employees, as defined in §18A-1-1 of
73 this code, except classroom teachers, shall gain seniority in their nonteaching area of professional
74 employment on the basis of the length of time the employee has been employed by the county
75 board of education in that area: *Provided*, That if an employee is certified as a classroom teacher,
76 the employee accrues classroom teaching seniority for the time that employee is employed in
77 another professional area. For the purposes of accruing seniority under this subsection,
78 employment as principal, supervisor or central office administrator, as defined in §18A-1-1 of this
79 code, shall be considered one area of employment.

80 (k) Employment for a full employment term equals one year of seniority, but an employee
81 may not accrue more than one year of seniority during any given fiscal year. Employment for less
82 than the full employment term shall be prorated.

83 (l) All decisions on reductions in force shall be based on qualifications as set forth in a
84 county board policy. Furthermore, for the purposes of this subsection and subsections (m) through
85 (t), inclusive, of this section, the word "qualifications" means the qualifications set forth in county
86 board policy and only means qualifications set forth in subsection (b) of this section to the extent
87 those qualifications are set forth in county board policy: *Provided*, That in defining the word
88 "qualifications" in its policy, the county board:

89 (1) Shall consider including the following criteria:

90 (A) Seniority;

91 (B) Appropriate certification, licensure, or both;

92 (C) Amount of experience relevant to the position or, in the case of a classroom teaching
93 position, the amount of teaching experience in the required certification area;

94 (D) The amount of course work, degree level, or both in the relevant field and degree level
95 generally;

96 (E) Academic achievement;

97 (F) In the case of a principal or classroom teaching position, certification by the National
98 Board for Professional Teaching Standards;

99 (G) Specialized training relevant to performing the duties of the job;

100 (H) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this
101 code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the
102 teaching profession;

103 (I) Other measures or indicators upon which the relative qualifications of the applicant may
104 fairly be judged;

105 (J) In the case of transfer or recall to a classroom teaching position, the recommendation of
106 the principal of the school at which the applicant will be performing a majority of his or her duties;
107 and

108 (K) In the case of transfer or recall to a classroom teaching position, the recommendation,
109 if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code by
110 the faculty senate of the school at which the employee will be performing a majority of his or her
111 duties;

112 (2) Shall consider other criteria set forth in subdivision (1) of this subsection to the extent
113 they are included in the county board policy only after considering personnel whose last
114 performance evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code, as
115 applicable, is less than satisfactory; and

116 (3) May not include salary as one of the criteria in the definition.

117 (m) Whenever a county board is required to reduce the number of professional personnel
118 in its employment, the selection of the employee to be properly notified and released from
119 employment pursuant to the provisions of section two, article two of this chapter shall be based
120 upon seniority, certification, licensure and performance evaluations. The provisions of this
121 subsection are subject to the following:

122 (1) In the event of a reduction in force, a county board of education may properly notify and
123 release from employment pursuant to the provisions of section two, article two of this chapter any
124 classroom teacher with unsatisfactory evaluations for the previous two consecutive years
125 regardless of years of service instead of release from employment of less senior classroom
126 teachers with satisfactory performance evaluations;

127 (2) All persons employed in a certification area to be reduced who are employed under a
128 temporary permit shall be properly notified and released before a fully certified employee in such a
129 position is subject to release;

130 (3) Notwithstanding any provision of this code to the contrary, for any vacancy in an
131 established, existing or newly created position that, on or before March 1, is known to exist for the
132 ensuing school year, upon recommendation of the superintendent, the board shall appoint the
133 successful applicant from among all qualified applicants. All employees subject to release shall be
134 considered applicants for the positions for which they are qualified and shall be considered before
135 posting such vacancies for application by nonemployees;

136 (4) An employee subject to release shall be employed in any other professional position
137 where the employee is certified and was previously employed or to any lateral area for which the
138 employee is certified, licensed or both, if the employees seniority is greater than the seniority of
139 any other employee in that area of certification, licensure or both;

140 (5) If an employee subject to release holds certification, licensure or both in more than one
141 lateral area and if the employees seniority is greater than the seniority of any other employee in
142 one or more of those areas of certification, licensure or both, the employee subject to release shall
143 be employed in the professional position held by the employee with the least seniority in any of
144 those areas of certification, licensure or both; and

145 (6) If, prior to August 1 of the year, a reduction in force is approved, the reason for any
146 particular reduction in force no longer exists as determined by the county board in its sole and
147 exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the

148 released employee in writing of his or her right to be restored to his or her position of employment.
149 Within five days of being so notified, the released employee shall notify the board, in writing, of his
150 or her intent to resume his or her position of employment or the right to be restored shall terminate.
151 Notwithstanding any other provision of this subdivision, if there is another employee on the
152 preferred recall list with proper certification and higher seniority, that person shall be placed in the
153 position restored as a result of the reduction in force being rescinded.

154 (n) For the purpose of this article, all positions which meet the definition of "classroom
155 teacher" as defined in §18A-1-1 of this code shall be lateral positions. For all other professional
156 positions, the county board of education shall adopt a policy by October 31, 1993, and may modify
157 the policy thereafter as necessary, which defines which positions shall be lateral positions. In
158 adopting the policy, the board may give consideration to the rank of each position in terms of title;
159 nature of responsibilities; salary level; and certification, licensure or both; along with the days in
160 the period of employment.

161 (o) All professional personnel whose lesser qualifications, as determined by county board
162 policy, with the county board is insufficient to allow their retention by the county board during a
163 reduction in workforce shall be placed upon a preferred recall list. As to any professional position
164 opening within the area where they had previously been employed or to any lateral area for which
165 they have certification, licensure or both, the employee shall be recalled on the basis of
166 qualifications if no regular, full-time professional personnel, or those returning from leaves of
167 absence with greater qualifications apply for and accept the position.

168 (p) The board shall annually notify professional personnel on the preferred list of the job
169 application procedures and any websites used to advertise vacancies. The notice shall be sent by
170 certified mail via the U.S. Postal Service to the last known address of the employee, and it shall be
171 the duty of each professional person to notify the board of continued availability annually of any
172 change in address, or of any change in certification, licensure or both.

173 (q) Openings in established, existing or newly created positions shall be processed as
174 follows:

175 (1) Boards shall be required to post and date notices of each opening at least once. At their
176 discretion, boards may post an opening for a position other than classroom teacher more than
177 once in order to attract more qualified applicants. At their discretion, boards may repost an
178 opening for a classroom teacher after the first posting in order to attract more qualified applicants
179 subject to the following:

180 (A) Each notice shall be posted in conspicuous working places for all professional
181 personnel to observe for at least five working days which may include any website maintained by
182 the county board;

183 (B) At least one notice shall be posted within 20 working days of the position openings and
184 shall include the job description;

185 (C) Any special criteria or skills that are required by the position shall be specifically stated
186 in the job description and directly related to the performance of the job;

187 (D) Postings for vacancies made pursuant to this section shall be written so as to ensure
188 that the largest possible pool of qualified applicants may apply; and

189 (E) Job postings may not require criteria which are not necessary for the successful
190 performance of the job and may not be written with the intent to favor a specific applicant;

191 (2) No vacancy may be filled until after the five-day minimum posting period of the most
192 recent posted notice of the vacancy;

193 (3) If one or more applicants under all the postings for a vacancy meets the qualifications
194 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board
195 within 30 working days of the end of the first posting period;

196 (4) A position held by a teacher who is certified, licensed or both, who has been issued a
197 permit for full-time employment and is working toward certification in the permit area shall not be
198 subject to posting if the certificate is awarded within five years; and

199 (5) Nothing provided herein may prevent the county board of education from eliminating a
200 position due to lack of need.

201 (r) Notwithstanding any other provision of the code to the contrary, where the total number
202 of classroom teaching positions in an elementary school does not increase from one school year
203 to the next, but there exists in that school a need to realign the number of teachers in one or more
204 grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels
205 for which they are certified without that position being posted: *Provided*, That the employee and
206 the county board mutually agree to the reassignment.

207 (s) Reductions in classroom teaching positions in elementary schools shall be determined
208 pursuant to the considerations set forth in county board policy and processed as follows:

209 (1) When the total number of classroom teaching positions in an elementary school needs
210 to be reduced, the reduction shall be made on the basis of qualifications with the least qualified
211 classroom teacher being recommended for transfer; and

212 (2) When a specified grade level needs to be reduced and the least qualified employee in
213 the school is not in that grade level, the least qualified classroom teacher in the grade level that
214 needs to be reduced shall be reassigned to the position made vacant by the transfer of the least
215 qualified classroom teacher in the school without that position being posted: *Provided*, That the
216 employee is certified, licensed or both and agrees to the reassignment.

217 (t) Any board failing to comply with the provisions of this article may be compelled to do so
218 by mandamus and shall be liable to any party prevailing against the board for court costs and
219 reasonable attorney fees as determined and established by the court. Further, employees denied
220 promotion or employment in violation of this section shall be awarded the job, pay and any
221 applicable benefits retroactive to the date of the violation and payable entirely from local funds.
222 Further, the board shall be liable to any party prevailing against the board for any court reporter
223 costs including copies of transcripts.

224 (u) Notwithstanding any other provision of this code to the contrary, upon recommendation
225 of the principal and approval by the classroom teacher and county board, a classroom teacher
226 assigned to the school may at any time be assigned to a new or existing classroom teacher
227 position at the school without the position being posted.

228 (v) All personnel in a public charter school shall continue to accrue seniority in the same
229 manner that they would accrue seniority if employed in a noncharter public school in the county for
230 the purpose of employment in noncharter public schools.

NOTE: The purpose of this bill is to add experience needed for principals to apply and to grant waivers of experience required in employment of professional education personnel if nobody applies with the experience needed.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.